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PACIFIC  TELESIS
Group-Washington

August 12, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Dear Mr. Caton:

Re: *RM-8837, Wireless Fixed Access Local Loop Services; Petition for Allocation of Radio Spectrum in the 2 Ghz Band for the Provision of Wireless Fixed Access Local Loop Services*

On behalf of Pacific Telesis Group, please find enclosed an original and six copies of its "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Wireless Fixed Access Local Loop Services

RM Docket No. 8837

Petition for Allocation of Radio Spectrum in the
2 GHz Band for the Provision of Wireless Fixed
Access Local Loop Services

COMMENTS OF PACIFIC TELESIS GROUP

I. INTRODUCTION AND SUMMARY

Pacific Telesis Group ("Pacific") hereby comments briefly on three issues raised by DSC's Petition for Rulemaking (the "Petition"). First, we express our support for DSC's assertion that providers of fixed wireless local loop services¹ that act as substitutes for wireline local exchange service (which we term "substitute services") should be regulated as local exchange carriers pursuant to Section 251 of the Telecommunications Act of 1996 (the "Act") for the provision of these services. Second, we oppose DSC's analysis of preemption and, unlike DSC, advocate that the Commission leave much of the responsibility for regulating substitute services to the states, as Sections 251 and 252

¹ DSC calls its services "wireless fixed access local loop services" ("WFA-LL" services). We believe that fixed wireless local loop is any wireless service where the customer's dedicated radio transmit/receive unit is intended to be permanently installed on a stationary structure. The customer premises equipment that runs behind this transmit unit would consist of either wired telephones or commercial cordless products (Part 15).

of the Act require. Finally, we ask the Commission to ensure that LECs be eligible to participate in providing the WFA-LL services DSC proposes, and that the spectrum allocated for WFA-LL purposes be adequate to ensure that more than one licensee is permitted to offer such services within a geographic area.

We express no opinion as to the appropriateness of the various spectrum options DSC sets forth. We do operate a private, internal radio service within one of the spectrum ranges DSC proposes to use, but believe DSC's WFA-LL will not interfere with our internal service. Should such interference occur, or become likely, we reserve our right to object to DSC's proposed use of the affected spectrum at that time.

II. PROVIDERS OF FIXED WIRELESS LOCAL LOOP SERVICES THAT ACT AS SUBSTITUTES FOR WIRELINE LOCAL EXCHANGE SERVICES SHOULD BE REGULATED AS LOCAL EXCHANGE CARRIERS

As DSC concedes (Petition at 36), providers of fixed wireless local loop services that act as substitutes for wireline local exchange services should be regulated as local exchange carriers. As we have said in the Commission's Wireless Interconnection (CC Docket No. 95-185) and CMRS Fixed Access Local Loop (WT Docket No. 96-6) proceedings, considerations of parity of regulation and fairness require that like services be regulated in like fashion, regardless of technology. Wireless services have matured substantially and no longer need special help in order to compete in the marketplace. LECs face unprecedented competition in their local exchange markets, and must be placed on an equal footing with their competitors in order to survive.

The Commission long has expressed the view that wireless services that substitute for wireline local exchange services should be regulated as competitive local exchange carriers. For example, the Commission has stated: "Part 22 [i.e., wireless] licensees are common carriers generally engaged in the provision of local exchange telecommunications in conjunction with the local telephone

companies and are therefore ‘co-carriers’ with the telephone companies. . . .² In view of the fact that cellular carriers are generally engaged in the provision of local, intrastate, exchange telephone service, the compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern.”³

The Commission has also stated that “broadband PCS holds the promise of being a full competitor for cellular service and a potentially effective substitute for the wired local loop. . . .⁴ [C]ellular carriers are common carriers generally engaged in the provision of local exchange telecommunications in conjunction with the local telephone companies and therefore ‘co-carriers’ with the telephone companies.”⁵

We agree with these statements and ask the Commission to adhere to its previous stance by regulating substitute service providers as LECs.

III. FEDERAL LAW DOES NOT PREEMPT STATE REGULATION OF SUBSTITUTE SERVICES

Contrary to DSC’s assertion (Petition at 36), “substitute services” should be regulated primarily by the states; federal law does not preempt state regulation in this area. This is especially true because DSC concedes it should be regulated pursuant to Sections 251-53 of the Act. (Id.) Sections 251-53 do not give the Commission sole jurisdiction over LECs. Rather, they contemplate a

² Memorandum Opinion and Order, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d (P & F) 1275 (FCC Mar. 5, 1986).

³ Id. at 1284-85.

⁴ Notice of Proposed Rulemaking and Notice of Inquiry, Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, 9 F.C.C. Rcd 5408, 5430 (1994).

⁵ Id. at 5453 n.192.

system of dual jurisdiction, in which the FCC presides over interstate telecommunications services and the states retain jurisdiction over intrastate services as explained more fully in Section 252.

Thus, for example, Section 252(c)(2) requires the state commissions to review arbitrated interconnection agreements according to this Commission's regulations, but it also makes clear Congress's expectation that federal regulations will not establish rates for interconnection, network elements, or wholesale services: The "State commission shall . . . establish any rates for interconnection, services, or network elements." Section 252(d) repeats that "State commission[s] shall determine" just and reasonable rates for interconnection, wholesale services, and network elements.

The fact that DSC and other providers of "substitute services" are Commercial Mobile Radio Service ("CMRS") providers does not alter this jurisdictional scheme. Where CMRS providers act as local exchange carriers, they should be subject to the same regulatory scheme as are all other local exchange carriers, and should not be exempted from such regulation simply because they use different technology to deliver their services. Because the Commission has opined in the quotations cited above that CMRS service should be included in the definition of "local exchange service," Section 332(c) of the Telecommunications Act, which generally governs the regulation of CMRS providers, does not apply. *See* 47 U.S.C. § 153(26). Rather, the general regulatory scheme governing local exchange carriers applies, and fixed wireless local loop service should be regulated as local exchange service. That service is not subject to broad federal preemption, but instead is dually regulated by the FCC and state commissions.

IV. THE COMMISSION SHOULD ALLOCATE ENOUGH SPECTRUM FOR “WFA-LL” SERVICES TO ALLOW MORE THAN ONE LICENSEE -- INCLUDING A LEC -- TO OPERATE AS A FIXED WIRELESS LOCAL LOOP PROVIDER IN THE SAME AREA

DSC proposes that the Commission allocate only enough spectrum for its “WFA-LL” service so that one licensee may offer the service in a particular area. (Petition at 34.) In our opinion, the days of a sole provider in a service area are disappearing, and a model of two or more facilities-based competitors is emerging. This model moves wireless service closer to true market conditions by ensuring the presence of at least one wireless competitor. At the very least, if the Commission allows only one licensee in an area, the licensee should be subject to unbundling and resale requirements similar to those imposed on incumbent LECs (“ILECs”).

Moreover, ILECs and their affiliates should be eligible to be wireless local loop providers. As DSC observes, wireless local loop service is extremely useful in high cost, rural areas, and also allows for rapid deployment of service in urban areas. (Petition at i - ii.) ILECs should be allowed to enhance their ability to serve these communities -- and in so doing, help promote universal service more rapidly and at lower cost -- by the use of wireless technology.

We ask the Commission 1) to allocate adequate spectrum for DSC’s technology or other fixed wireless local loop technologies to permit more than one licensee per service area, and 2) to give LECs equal opportunity as any other provider to serve as a fixed wireless local loop carrier in a given area.

V. CONCLUSION

We request that the Commission 1) regulate “substitute service” providers as local exchange carriers, 2) clarify that federal law does not preempt state regulation of “substitute services,”

and 3) allocate adequate spectrum for fixed wireless local loop services such that more than one provider -- including an ILEC -- may provide the service in a given area.

Respectfully submitted,

PACIFIC TELESIS GROUP

A handwritten signature in cursive script, reading "Sarah R. Thomas", written over a horizontal line.

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Its Attorneys

Date: August 12, 1996
0141683.01

CERTIFICATE OF SERVICE

I, Michelle K. Choo, hereby certify that on this 12th day of August, 1996, a copy of the foregoing "**Comments of Pacific Telesis Group**," was mailed by U.S. first-class mail, postage prepaid to the party listed below.

James L. Donald
Chairman and Chief Executive Officer
DSC Communications Corporation
1000 Coit Road
Plano, Texas 75075-5813



Michelle K. Choo